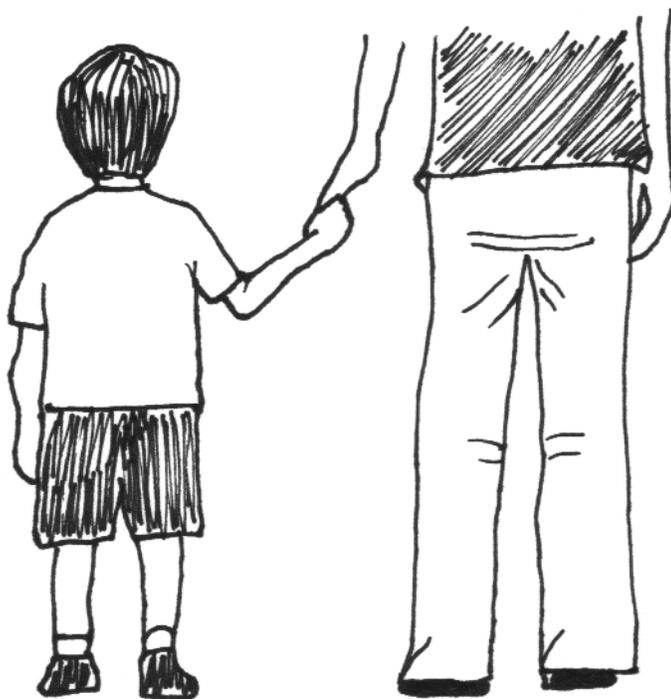


How to Become a Probate Guardian of a Child in



Written by:
San Francisco Superior Court Probate Department
and adapted for

The following people and organizations have made this book possible:

Honorable John Dearman, Presiding Judge of the Probate Court

Commissioner Dorothy McMath, Commissioner of the Probate Court

Mary Joy Quinn, Director of the Probate Court

Stella Pantazis, Senior Court Staff Attorney*

Manuel Valenzuela, Court Investigator

Legal Services for Children

Transcend

*Editor, Supervisor of Self-Represented Guardianship Program

Use this manual to learn about:

- ◆ How to fill out the forms you need to become a probate guardian
 - ◆ Your rights and responsibilities as a probate guardian
 - ◆ Resources in our community that can help you
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Who is this manual for?

This manual is not for everyone. It is for adults who do not have a lawyer and want to be the probate guardian of a child. Also,

- ◆ the person who wants to be the probate guardian and the child must both live together now in
- ◆ the child must have little or no money, no estate, and no inheritance.

To be a guardian to a child in a juvenile dependency case, contact:

If this manual is *not* for you, talk to a lawyer. If you do not have a lawyer, call the local Bar Association:

What is guardianship?

There are several kinds of guardianships. This manual talks about *Probate Guardianship of the Person*.

Guardianship of the Person is when the Court appoints an adult who is not the child's parent to take care of the child.

If a parent with legal custody of a child has an incurable disease, the parent can petition (ask) the Court to appoint a *joint guardian*. This is called *Joint Guardianship of the Person*. While the parent is still alive, both will be guardians. And when the parent dies, the joint guardian will have full custody of the child without another guardianship hearing.

What does a guardian do?

For the most part, the guardian has the same responsibilities as a parent. This means the guardian has full legal and physical custody of the child. That means the guardian is responsible for the child's care, including the child's:

- ◆ Food, clothing and shelter
- ◆ Safety and protection
- ◆ Physical and emotional growth
- ◆ Medical and dental care
- ◆ Education and any special needs

The guardian may also be responsible for the child's behavior and any damage the child may cause.

The guardian also makes appropriate decisions about the kind of contact the child can have with the parent. But, the Court may order the guardian to allow visitation.

Does a guardian have other responsibilities?

Yes. Every year, the guardian will turn in a *Status Report* to the Court.

The guardian must also meet with Court Visitors from the

What all guardians need to know...

Do I decide where the child will live?

Yes. As guardian, you decide where the child lives. But, if you or the child moves, you *must* tell the Court in writing — even if the child is moving to or from the guardian’s or parent’s home.

What if I want to move the child out of California?

You cannot move the child out of California without first getting the Court’s permission.

What if we move within California?

If you move to another place in California, give the Court the new address and phone number right away.

Remember: Even if you move to a different place in the county, you must give the Court your new address and phone number right away.

Do I make the decisions about the parents’ contact with the child?

In general, yes. You get to make appropriate decisions. But, the Court may order you to allow visitation.

If you are worried about the child’s safety, ask the Court for supervised visitation.

Can I get financial help to take care of the child?

You may be able to get child support or help from the government, like TANF (Temporary Aid to Needy Families), Social Security, Veterans Administration, or Indian Child Welfare benefits. You can apply at the

For more information, call:

Social Security Administration
(800) 772-1213
TTY (800) 325-0778

Veterans Administration
(800) 827-1000
TTY (800) 829-4833

Do I make the decisions about the child’s education?

Yes. You decide where the child goes to school. You must also help the child get any special services, like tutoring, if the child has special needs.

You are the child’s advocate in the school system. This means you must go to parent-teacher conferences, stay involved in the child’s education, and help the child meet his or her educational goals.

Do I make the decisions about healthcare for the child?

Yes. You must take care of the child's medical and dental needs. This means keeping in touch with the child's doctor and dentist and making sure the child gets proper care.

In most cases, you can make decisions about any treatment the child needs. You can add the child to your own private insurance, or enroll the child in Medi-Cal or Healthy Families. For help with Medi-Cal and Healthy Families, contact:

Do I make the decisions about the child's mental healthcare?

Yes. If the child needs it, you must arrange for counseling or other mental health services. You must also work with and keep in touch with the child's counselors.

Can I place the child in a mental health institution?

No. You cannot place the child in a mental health institution if the child does not want to be there.

If you feel the child needs to be in a mental health institution and the child does not want to go, you **must** contact the Court.

What if the child wants a driver's license?

You can give the child permission to apply for a driver's license. You can also choose to *not* give your permission. If you let the child get a license, you must also get auto insurance for the child.

Remember: If the child has an accident, you may be responsible for any damages caused by the accident.

What if the child wants to enlist in the military?

You can give the child permission to enlist in the military. If the child enters into active duty with the armed forces, you will no longer be the guardian. California law will consider the child to be an adult (emancipated).

What if the child wants to get married?

Both you *and* the Court must give permission. If the child marries, you will no longer be the guardian. California law will consider the child to be an adult (emancipated).

Can the Court ask me to take on other responsibilities?

Yes. The Court can order you to take on other duties or can place special conditions on you as guardian, if needed. Sometimes the Court will order you to come to Court, or to send in extra status reports. The Court can also order mediation or visitation.

What if the Court appointed a lawyer for the child?

The lawyer represents the child only. The lawyer does not represent you.

If the lawyer wants to talk to the child, you must let them.

What do I have to do to become the guardian?

1. Make sure you have these forms. ‘Help bubbles’ on each sample form will guide you.

The name of the form and the form number are always in the same place.

- ◆ *Petition for Appointment of Guardian**, GC-210
- ◆ *Declaration of Proposed Guardian**
- ◆ *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act**, FL-105/GC-120
- ◆ *Notice of Hearing**, GC-020
- ◆ *Confidential Guardian Screening Form**, GC-212
- ◆ *Duties of Guardian**, GC-248
- ◆ *Consent of Proposed Guardian*, GC-211
- ◆ *Order Appointing Guardian of Child*, GC-240
- ◆ *Letters of Guardianship*, GC-250
- ◆ *Proof of Service*, GC 982 (a)(23)

2. Fill out the forms. Then, make an appointment with
3. Make 3 copies of all forms marked with an * and file them at the Court Clerk’s office.

Sometimes the forms ask you for more information, like copies of documents or explanations. These are called *Attachments*.

If you need to add an Attachment, use the special “pleading” paper included in this packet. At the top of each one, write:
Attachment to Question ____,
Form Number _____

The clerk will ask you to pay a fee. Keep your receipt. You may need it later.

If you can't afford to pay the Court fees, fill out the:

- ◆ Application for Waiver of Court Fees and Costs, 982 (a)(17), and
- ◆ Order on Application for Waiver of Court Fees and Costs, 982 (a)(18)

4. The Clerk will keep the original forms and give you back 2 “Endorsed Filed” copies.

The Clerk will stamp your hearing date on the petition. This is the date the judge will hear your case.

5. Now you must “serve” or “give notice.” This is complicated. Read *How to Give Notice* on page 6.

After you give notice (by mail or in person), file your Proof of Service at the Clerk’s Office.

6. The Court Investigator will call you and set up a home visit. Sometimes the investigator will meet with you and the child more than once.

The Court wants the investigator to:

- ◆ See where the child will be living
- ◆ See if you can care for the child
- ◆ Interview the parents, if needed
- ◆ Review your criminal record and child protective service record – if you have one. The investigator will also check the records of other people who live with you.
- ◆ Write a report for the Court
- ◆ Make recommendations about your case

The image shows a sample of a "Petition for Appointment of Guardian of Minor" form (GC-210) from the Superior Court of California, County of San Francisco. The form is stamped "ENDORSED FILED" with the date "MAR 18 2003" and signed by "GORDON PARK-LI, Clerk" and "CYNTHIA S HERBERT, Deputy Clerk". The hearing date is "APR 17 2003". The form includes sections for petitioner information, proposed guardian, and minor information.

How to Give Notice

The law says you **must** “give notice” to certain people, relatives and agencies. This means someone — not you — must “serve” (give) copies of your Court forms to those people and agencies so they will know you are asking to be the guardian of the child. You must do this even if you think they don’t care or may disagree with you.

There are rules for giving notice. You must follow them carefully. Otherwise, you may have to go back to Court.

There are 2 kinds of notice: Personal and Mail.

Personal notice means the server personally hands the papers to someone.

You must give **personal** notice to:

- ◆ The parents (or the person(s) with legal custody of the child now)
- ◆ The child you want to be guardian to, if the child is 12 or over

You can use **mail** to give notice to:

- ◆ The child’s brothers and sisters, half-brothers and half-sisters (from either parent), and the child’s grandparents (parents of the child’s mother and parents of the child’s father)
- ◆

If you are not related to the child by blood, marriage, or adoption, you must also mail notice to the:

- ◆ California Department of Social Services

Give notice to the parents

Someone who is 18 or over — **not you** — must personally serve (give) a copy of the *Notice of Hearing and Petition for Appointment of Guardian* and all other forms you filled out at least 15 days before the Court hearing.

Who can serve?

Ask someone you know who is 18 or over or ask a process server. A “Process Server” is a business you pay to deliver Court forms. Look in the Yellow Pages, under “Process Serving.”

Unless the judge gives you permission, you **cannot** serve the parents by mail.



The person who serves the forms must fill out and sign the Proof of Service, Form 982(a)(23), then give it to you. Then, file it at the Clerk’s office.

Give notice to the grandparents, brothers and sisters, half-brothers and half-sisters

Someone who is 18 or over — **not you** — must serve (mail) a copy of the *Notice of Hearing and Petition for Appointment of Guardian* and all other forms you filled out at least 15 days before the Court hearing.

If the grandparents are the legal guardians, you must personally serve them.

The server must fill out and sign the Proof of Service by Mail on the back of the Notice of Hearing form, then give it to you. Then, file it at the Clerk’s office.

Give notice to the

Someone who is 18 or over — not you — must serve (by mail) a copy of:

- ◆ Notice of Hearing, GC-020
- ◆ Petition for Appointment of Guardian, GC-210
- ◆ Confidential Guardian Screening Form, GC-212
- ◆ Declaration of Proposed Guardian
- ◆

(The County will check for criminal charges or child abuse for all adults who live in your home.)

The server must mail the forms to this address at least 15 days before the Court hearing:

They will do a background check on you and any other adult who lives in your home. They will check to see if there have been child abuse or criminal charges.

The server must fill out and sign the Proof of Service by Mail on the back of the *Notice of Hearing* form, then give it to you. Then, file it at the Clerk's office,

Give notice to the California Department of Social Services

(if you are not related by blood, marriage or adoption)

At least 15 days before the Court hearing, someone who is 18 or over — not you — must serve (by mail) the same forms the server mailed to the California Department of Social Services.

The server must mail the forms to:

State Department of Social Services
Director of Social Services
744 P Street
Sacramento, CA 95814

The server must fill out and sign the Proof of Service by Mail on the back of the Notice of Hearing form, then give it to you. Then, file it at the Clerk's office.

Get ready for your hearing

Go to your hearing.

Look at the Petition you filed with the Clerk to find the date, time and room of your hearing.

Both you and the child must go to the hearing. Other relatives and friends can go to the hearing, too.

Get there at the hearing time. Don't be late!

- ◆ Find the Courtroom and sit down inside
- ◆ You will see a video about Guardianship before your hearing
- ◆ Wait for your name to be called
- ◆ Watch the other cases so you will know what to do

The form is titled "PETITION FOR APPOINTMENT OF GUARDIAN OF MINOR" and is filed in the Superior Court of California, County of San Francisco. The filing date is MAR 18 2003. The petitioner is CYNTHIA S HERBERT, Deputy Clerk. The form includes sections for the petitioner's information, the minor's information, and various legal declarations and requests. The form is numbered GC-210.

What to bring to your hearing:

- ◆ The child
- ◆ *Order Appointing Guardian of the Child*
- ◆ *Letters of Guardianship*
- ◆ Copies of signed *Proof of Service of Notice*

If you don't speak English well, bring an interpreter.

The judge may ask you why you want to be the guardian.

Write down what you want to say. Practice saying it in less than 2 minutes. If you get nervous, just read what you wrote down.

The judge may also ask the child questions.

Tell the child to tell the truth and speak slowly. If you or the child do not understand, say "I don't understand."

The judge will decide right away if you can be the guardian.

If the judge "grants" your petition, give the Court Clerk your form *Order Appointing Guardian of the Child*.

The judge will sign the *Order* and you will sign the *Letters of Guardianship*.

Take both forms to the clerk's office to certify and file them.

What happens after the hearing?

Do I need to stay in touch with the Court?

If the judge says you can be the child's guardian, your relationship with the Court does not end, even after you file all your papers with the Court Clerk.

Every year (or sometimes more often) the Court will mail you a status report to your home address.

Fill it out and return it to the Probate Department. The Court Investigator will read your report. If there are no problems, the Court will send you a new status report in a year.

Sometimes the Court will want more status reports or the Court can order you to come speak to the judge.



Can the Court visit our home?

Yes. The Court can refer your case to the

If this happens, someone from the program will visit your home one year after guardianship is granted and then every two years after that.

If there are any problems, the Court will look at the case and take steps to help the guardian.

The Court can order the guardian to come to Court or can appoint a lawyer for the child.

How long will I be guardian?

You will be the child's guardian until one of these things happens:

- ◆ The child turns 18;
- ◆ The child is adopted, marries, enters the military or is emancipated by Court order;
- ◆ The Court ends the guardianship;
- ◆ A different person (successor guardian) becomes the guardian; or
- ◆ The child dies before turning 18.

What if the child, the child's parent, or the guardian wants to end the guardianship?

If one of these people wants to end the guardianship, they must fill out and file a form called *Petition for Termination of Guardianship*. They must show the Court the guardianship is no longer needed or that ending the guardianship would be in the child's best interest.

For help filling out the forms to end a guardianship, contact the

Need more help?

Legal help

Or, to find a lawyer, call:

Support for Guardians

Financial help

To see if you can get financial help, call

Support for Children

When the child needs support or counseling, he or she can call:

For kids who are having problems with guardians, call